

**Amend Section 30187 of the Revenue and Taxation Code to change the return due date for consumers owing excise taxes on purchases from out-of-state cigarette sellers to be consistent with the due date of their use tax return.**

**Source: Excise Taxes and Fees Division**

### **Existing Law**

Under current law, Section 30101 of the Cigarette and Tobacco Products Tax Law imposes an excise tax of 6 mills (or 12 cents per package of 20) on each cigarette distributed. In addition, Sections 30123 and 30131.2 impose a surtax of 12 ½ mills (25 cents per package of 20) and 25 mills (50 cents per package of 20), respectively, on each cigarette distributed. The current total tax on cigarettes is 43 ½ mills per cigarette (87 cents per package of 20).

Sections 30123 and 30131.2 also impose a surcharge on tobacco products at a rate to be annually determined by the Board. The tobacco products tax rate is equivalent to the combined rate of tax on cigarettes. The surcharge rate for fiscal year 2006-07 is 46.76 percent.

Section 30187 requires every consumer or user subject to the excise tax resulting from the use or consumption of untaxed cigarettes or tobacco products in this state from whom the cigarette and/or tobacco products tax has not been collected to file with the Board, on or before the 25th day of the month following receipt of cigarettes or tobacco products, a report of the amount of cigarettes received by him or her in the preceding calendar month, submitting with the report the amount of tax due.

Under current Sales and Use Tax Law, sales and use tax is required to be remitted and reported to the Board quarterly on or before the last day of the month next succeeding each quarterly period. In order to facilitate the collection of taxes, the Board may require reporting periods other than a quarterly basis, such as monthly or yearly.

### **Comments**

The Board recently implemented the Cigarette and Tobacco Product Internet Program to collect the California state excise taxes and use taxes from California consumers purchasing untaxed cigarettes and/or tobacco products from out-of-state Internet retailers, and/or by way of mail or telephone, for self-consumption in California.

Under the federal Jenkins Act, the Board receives information from out-of-state sellers who ship cigarettes to California customers. The seller is required to provide the buyer's name and address, and the brand and quantity of cigarettes sold or transferred. These records from out-of-state retailers show that purchasers received a shipment of cigarettes and/or tobacco products purchased through the Internet, phone, or mail, and, have not paid the state excise and use tax due.

As such, the Excise Taxes and Fees Division register these purchasers as a cigarette and/or tobacco consumer and send them returns to pay the state tax owed. Every registered consumer receives two returns (a quarterly excise tax return and a use tax

return) to report out-of-state purchases and pay the excise tax and the use tax due on the purchase. (The use tax is the equivalent rate of the sales tax but it is owed by the purchaser instead of the retailer.) However, the due dates for the payment of tax and the two returns differ, which may be confusing to the taxpayer and could result in late tax returns and payments upon which a 10 percent penalty and interest may be imposed.

### **This Proposal**

This proposal would make the due date for the excise tax return consistent with the use tax return for consumers reporting under the Cigarette and Tobacco Product Internet Program.

*Section 30187 of the Revenue and Taxation Code is amended to read:*

30187. Every consumer or user subject to the tax resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 from whom the tax has not been collected under Section 30108 shall, on or before the ~~last 25th~~ day of the month following the end of the quarter ~~receipt of cigarettes or tobacco products~~, file with the board a report of the amount of cigarettes or tobacco products received by him or her in the preceding calendar quarter ~~month~~ in that detail as the board may prescribe and in the form as prescribed by the board, which may include, but not be limited to, electronic media, submitting with the report the amount of tax due. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.